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IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

ALONZO AUSTIN, Executor for  
RUTH H. LEWIS, Estate  
Plaintiff's

V.

MODERN WOODMEN OF AMERICA,  
et. al.

Defendant's

DEBRA P. HACKETT, CLK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT OF ALA

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Case NO. 3:07-CV-138-MHT

PLAINTIFF'S MOTION FOR NEW TRIAL AND  
TO AMEND JUDGEMENT, F.R.C.P. 59

COMES NOW, Plaintiff's, ALONZO AUSTIN Executor  
For RUTH H. LEWIS, Estate, and respectfully  
moves this honorable Court to consider its  
instant motion for a New trial and  
Cites as its grounds pursuant to RULE 59(a)(2)  
which states in (a)(2) in an action tried  
without a jury, for any of the reasons for which  
rehearing have heretofore been granted in suits  
in equity in the Courts of the UNITED STATES.

ON a motion for a New trial in an action  
tried without a jury, the Court may open the  
judgement if one has been entered, take  
Additional testimony, Amend findings of fact and  
Conclusions of Law or make New findings and  
Conclusions, and direct the entry of a new judgement.  
And, under 59(e), any motion, to alter or Amend a judgement  
shall be filed no later than 10 days after entry of  
Judgement. Therefore the Plaintiff's Grounds

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For a New trial and to Amend Judgement is based upon the fact that Court for what ever reason did not indicate that he has considered or adopted Magistrate's Conclusions of Law. See: Duryea v. Third Northwestern Nat'l Bank (1979), CA 8, MINN) 602 F.2d 809.

### OTHER CASE LAW

Magistrates are Constitutionally empowered under § 636(c) to rule on motions for Summary Judgment. Since statute requires that parties and District Court consent to transference of case to Magistrate over whom District Court retains sufficient control. Sinclair v. Wainwright (1987, CA 11 Fla) 814 F.2d 1516.

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### OTHER GROUNDS

In light of the above cited Case Law The magistrate under § 636(c) was empowered to Rule on Plaintiff's Motions for Summary Judgment Submitted to the Court each time Plaintiff's was Order to Show Cause and allotted it's 10 days to answer as a pro se Litigant.

Plaintiff's did respond within the time allowed with its Motions Construed as such by the magistrate and yet rather than following Rule 56(a) & (e) wherein Plaintiff also submitted an Affidavit and Exhibits the Court chose instead to dismiss the §1983 Claims of Plaintiff's for Deprivation of Civil Rights by all the named Defendant's as joint Conspirators arising out of the Illegal Guardianship and Conservatorship

by Probate Judge. ALFONZA MEMEFEE of MACON County  
 Over the existence of a Durable General Power of Attorney  
 Under Color of State Law. in violation of  
 26-1-2 sub paragraph (a) and (b) Code of AL. 1975.

# STATE STATUTE § 26-1-2 (a) + B (AL 1975)

## § 26-1-2. Durable power of attorney.

(a) A durable power of attorney is a power of attorney by which a principal designates another his or her attorney in fact or agent in writing and the writing contains the words "This power of attorney shall not be affected by disability, incompetency, or incapacity of the principal," or "This power of attorney shall become effective upon the disability, incompetency, or incapacity of the principal," or similar words showing the intent, of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability, incompetency, or incapacity.

(b) All acts done by an attorney in fact pursuant to a durable power of attorney during any period of disability, incompetency or incapacity of the principal have the same effect and "inure" to the benefit of and bind the principal and his or her successors in interest as if the principal were competent, not disabled and "not incapacitated". NOTE: "ATTORNEY ALBERT C. BULL III," prepared the Durable General Power of attorney for Principal Ruth H. LEWIS as her Legal Counsel. However the Last Will and Testament attached as Exhibit 1 was prepared by the "Law of Agency" During its existence in 1983.

Naming as ~~Executor~~ Alonzo Austin, or his Daughter Metara Austin; Secondly, thus, the applicable Caption Alonzo Austin, Executor for Ruth H. Lewis Estate.

### UNITED STATES CONSTITUTIONAL LAW.

Plaintiff has stated through out these proceedings that the Agency was Attacked and Destroyed and all Documents Confiscated From Principal Home and Principal was Kidnapped and placed against her Will in an Assisted Living Facility in Montgomery. It was During this Period of time all Properties, Tangible and intangible were taken and converted during her life time. by the State actors under this illegal Guardianship and Conservatorship they embezzled Principal's Funds From South Trust bank in Tuskegee. This document was made a part of the record in an exhibit The funds amounted to approx. \$68,000<sup>00</sup> Both Homes owned by Principals valued at more the \$100,000<sup>00</sup> were unlawfully Seized by State actors under the "Illegal Guardianship and Conservatorship"

Plaintiff was also arrested on September 18, 1993 by Probate Judge Menefer because I would not violate my Fiduciary Duties to Principal Lewis by giving up all her possession to the State. Subsequently Plaintiff Vehicle was unlawful Seized by the Circuit Court Judge on March 22, 1994 under ALABAMA STATE RULE 70 Civil Procedure, without Due process or equal Protection of Law in violation of Agency Rights under 14th Amendment of Constitution of UNITED STATES.

## ARTICLE XIV

Under Section 1. ALL persons born or Naturalize in the United States, and Subject to the jurisdiction thereof, are Citizens of the United States and of the State where they reside. No state shall make or enforce any Law which shall abridge the privileges or immunities of Citizens of the United States; nor shall any State deprive any person of Life, Liberty, or Property, without the due process of Law; nor deny to any person within its jurisdiction the equal protection of the Laws.

WHEREFORE PREMISES, considered Plaintiff's Prays that this Court will grant the Motion for a New trial.

Respectfully Submitted.

by. Alonzo Austin Pro Se

Alonzo Austin Pro Se

Alonzo Austin

1321 Oliver-Carlis Rd.

Tuskegee, AL 36083

CERTIFICATE OF SERVICE. (334) 727-5476

I Alonzo Austin, Certify that I have Served the following documents upon

Spain and Gillion, LLC  
The Zinszer Building  
2117 Second Avenue North  
Birmingham AL 35203

by depositing same in the United States mail postage prepaid on the 26th day of July 2007.

Alonzo Austin Pro Se  
by. Alonzo Austin, Pro Se

Alonzo Austin

1321 Oliver-Carlis Rd., Tuskegee, AL 36083, Phone (334) 727-5476



WILLWILL

(Ruth Harikless Lewis)

I, RUTH HARIKLESS LEWIS, OF the City of Tuskegee State of Alabama, being of Sound <sup>(MAG)</sup> mind and disposing mind and memory do hereby make, publish, and declare this to be my Last will and testament, and hereby revoke ALL wills and codicils by me at anytime heretofore Made.

First: I direct that all my Just Left Funeral and Testamentary expenses be paid by the Executor hereinafter Named as soon as conveniently maybe after my decease.

Second: I give, devise and bequeath unto my Cousin, Alonzo Austin my (Attorney in fact) Ten thousand Dollars \$10,000.00 in an Annuity plus all interest with Modern Woodman of America, Certificate # 6T371084, A 1992 Buick Skylark GS, VIN. # 1G4NM14H4NC620001, A porcelain antique piggy Bank and Chiffonobe.

Third: ALL the rest, residue and remainder of my estate both real and personal of whatsoever kind and Nature and wheresoever the Same may be situated, of which I shall be seized or possessed, or to which I may in any way be entitled at the time of my Death, I Give devise and bequeath unto my foundation, "THE RUTH H. LEWIS, Legal Foundation for Lay Persons" Pending.

In the event that my beloved Cousin Alonzo Austin, shall predecease me, or that we shall die in the same accident, then in either of such events I hereby Give, devise and bequeath my entire residuary estate to the foundation to be established as soon as possible Namely THE RUTH H. LEWIS, Legal foundation for Lay persons operated by my Cousin's Metara Austin, as C.F.O. (Chief financial officer) with other officers to be Named at a later date by Metara Austin. of the City of Tuskegee State of Alabama.

In the event that my Cousin Metara, shall predecease me then I Give, devise and bequeath my entire residuary estate as aforesaid to Tamika, Keinee G. Austin (AA) with instruction to set up Scholarships for teaching Students at both Alabama State and Tuskegee Universities in the amount of \$500.00 yearly time 10 years, 5, Alabama State and 5, Tuskegee students minimum 3.00 G.P.A. (Low income).

EXHIBIT 1 WILL PG II

Ruth Harkless Lewis

Fourth: I, hereby Nominate and appoint my Cousin Alonzo Austin, to be my executor of this WILL and I direct that he be permitted to qualify as such without the giving of a bond or other Security in any Jurisdiction in the event that my Cousin and Agent shall fail to qualify or cease to act as such executor, then I nominate and appoint Tamika J. Austin, my Cousin and Agents daughter to be executor of this my WILL it also to be permitted to act without bond or other Security. I Authorize Metara, Tamika + Keivae G. Austin to operate my pending foundation as they see fit and deemed as in the best interest of foundation.

In witness whereof, I have hereunto subscribed my Name this day 22<sup>nd</sup> of October in the year one thousand Nine hundred and Ninty three 1993

Ruth Harkless Lewis

Witnesses:

Hattie M. Kindell  
Yvonne Austin

The foregoing Instrument was subscribed by the above-named Testatrix, Ruth H. LEWIS, at the city of Tuskegee County of Macon State of Alabama on this 22<sup>nd</sup> day of October, in the year one thousand Nine hundred and 93, in our presence, and was at the same time and place published and declared by her to us to be her last will and Testament and thereupon we, at her request, and in her presence, names thereto as attesting witnesses, did subscribe our saying first been read aloud to us in the presence of said Testatrix by executor Appointee Alonzo Austin..

Address:

Hattie M. Kindell  
Rt. 3, Box 364  
Tuskegee, AL. 36083

Address:

Yvonne Austin  
Rt. 3, Box 365  
Tuskegee, AL. 36083